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Legend:

Taxpayer	=
State A	=
State B	=
State C	=
State Law	=
State Regulations	=
Properties	=
a	=
b	=
Date 1	=
Communities	=
Operating Companies	=
Company X	=
Company Y	=
Company Z	=
Services	=
Facility	=
Residence	=
Year 1	=
Agency	=

Dear :

This is in reply to a letter dated December 22, 2011, requesting a ruling on behalf of Taxpayer. You have requested a ruling regarding a proposed restructuring to comply with the requirements of State Law and State Regulations.

Facts:

Taxpayer, a State A corporation, is a publicly traded real estate investment trust (REIT) that elected to be taxed as a REIT effective for its tax year beginning Date 1. Taxpayer has intended to qualify as a REIT at all times since. Taxpayer owns a geographically diverse portfolio of Properties in the United States and Canada.

Company X is a publicly-traded company. Currently, Taxpayer's wholly-owned taxable REIT subsidiary (TRS) owns a Communities in State B (the Company X Communities) that are operated and managed by subsidiaries of Company X (Company X Subsidiary). Each of the Company X Communities is held by a special purpose limited liability company that is disregarded for Federal income tax purposes. Taxpayer received a private letter ruling concluding that Taxpayer's ownership of the TRS and the special purpose limited liability companies and activities with respect to the Company X Communities would not cause Taxpayer's TRS to be treated as directly or indirectly operating or managing Properties and, that Taxpayer's TRS would not fail to qualify as a TRS under section 856(l) of the Internal Revenue Code. Taxpayer represents that Company X Subsidiary is an independent contractor (IK) as defined in section 856(d)(3).

Company Y is a Services company that is privately held by investors that are not related to or employed by Taxpayer. Taxpayer owns b Communities in State B (the Company Y Communities) that are currently licensed by State B and operated and managed by a subsidiary of Company Y (Company Y Subsidiary). In Year 1, Taxpayer acquired Company Z's portfolio, including the Company Y Communities (the Company Z Acquisition) and leased it to a TRS of Taxpayer pursuant to the provisions of section 856(d)(8)(B).

Under the typical ownership structure for a non-State B Community operated and managed by Company Y Subsidiary, Taxpayer owns the Community through a disregarded subsidiary (PropCo). PropCo then leases the Community to a disregarded entity (each wholly-owned disregarded entity, an OpCo) wholly-owned by Taxpayer's TRS. Each OpCo enters into a long-term management contract with Company Y Subsidiary. Prior to the Company Z Acquisition, Taxpayer received a private letter ruling concluding, among other things, that Company Y Subsidiary qualifies as an eligible independent contractor (EIK) under section 856(d)(9)(A) with respect to the Communities it manages or operates for Taxpayer's TRS.

In connection with the Company Z Acquisition, Taxpayer inherited the structure that Company Z had created to facilitate licensure of the Company Y Communities. The current license holder entities are owned by a director of the former Company Z who

became a member of Taxpayer's Board of Directors following the Company Z Acquisition. Under the current structure for the Company Y Communities, the applicable OpCo contracts with the license holder, either pursuant to a lease or an operating agreement, and the license holder contracts with Company Y Subsidiary to operate and manage the Community.

Because the leases, operating agreements and management agreements involving the current license holding entities create rights and responsibilities relative to the Company Y Communities that differ economically and otherwise from the rights and responsibilities that currently exist with respect to the other non-State B Communities that Company Y Subsidiary operates and manages for Taxpayer's TRS, Taxpayer's TRS and certain of its affiliates and Company Y and certain of its affiliates have entered into an agreement (the Taxpayer/Company Y Agreement). Under this agreement the parties agreed to make true-up payments to each other to ensure that the economic arrangements for the Company Y Communities are the same as the economic arrangements that exist with respect to non-State B Communities that Company Y Subsidiary operates and manages for Taxpayer's TRS. The agreement also provides that to the extent practical and consistent with State Law, the Company Y Communities will be operated and managed by Company Y Subsidiary in the same manner as non-State B Communities that Company Y Subsidiary operates and manages for Taxpayer's TRS.

State B Regulatory Regime

State Law imposes unique requirements on the owners and license holders of Communities located in State B. The major requirements that differ from other state requirements are: (1) the license holder may not be owned by a business corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market, a subsidiary of such corporation, or a corporation any of the stock of which is owned by another corporation; and (2) the license holder is required to retain certain power and authority that, in other states, applicable law would allow to be delegated to a manager under the terms of a management agreement.

The existing management agreements for the non-State B Communities operated and managed by Company X Subsidiary and Company Y Subsidiary for Taxpayer's TRSs delegate to Company X Subsidiary and Company Y Subsidiary substantially all authority to operate and manage the communities on a day-to-day basis, including, among other things, employee matters, provision of care, regulatory compliance, collection of revenue, payment of expenses, and food service. The existing management agreements with respect to the Company Y Communities between the license holders and Company Y Subsidiary (to be assumed by the new license holder), and the management agreements to be entered into by the new license holder and Company X Subsidiary with respect to the Company X Communities (collectively, the State B Management Agreements) will contain substantially the same delegation of

authority to Company X Subsidiary and Company Y Subsidiary as the non-State B management agreements contain. However, State Law requires that the license holder retain certain independent authority over operations at the Communities.

The existing management agreements for the Company Y Communities, and the management agreements for the Company X Communities will contain, a provision stating that the responsibilities of the license holder for a Community are not lessened by entering into the management agreement. The license holder retains full legal authority over operation and any powers not specifically delegated to the manager remain with the license holder.

As required by State Law, the management agreements contain provisions regarding the license holder's retention of, among other things, (1) independent control of accounts and books and records; (2) independent authority over hiring, disposition of assets, and adoption of policies; and (3) independent approval of budget and facility contracts.

Proposed Restructuring

One result of State B's requirements is that public companies, such as Taxpayer and its TRSs, that own Communities in State B must contract with third-party license holders that meet the requirements, who in turn contract with managers of Communities.

The Company X Communities are currently unlicensed and care is provided through an Agency that is a subsidiary of Company X. Recently, State B has indicated that Company X must become licensed. Accordingly, Taxpayer and Company X have agreed on a proposed structure, described below.

Taxpayer intends to take the following steps:

1. Creation of a new State C non-stock corporation (Company X License Holder) to act as the license holder for the Company X Communities.

2. Appointment of Taxpayer employees as the officers and directors of Company X License Holder.

3. Taxpayer's TRS and Company X License Holder enter into leases that conform to the leases that are currently in place with respect the Company Y Communities.

4. Company X License Holder and Company X Subsidiary enter into long-term management agreements.

5. Because the leases and management agreements discussed above create rights and responsibilities relative to the Company X Communities that differ economically and otherwise from the rights and responsibilities that currently exist with respect to the Company X Communities and with respect to the other non-State B Communities that Company X Subsidiary operates and manages for Taxpayer's TRS, Company X and Taxpayer's TRS enter into a letter agreement to make true-up payments to each other as necessary so that, in the end, the economic arrangements that exist between them prior to the implementation of the above steps are unchanged and to the extent practical consistent with State Law, cause Company X Communities to be operated and managed by Company X Subsidiary in the same manner as the other Communities that Company X Subsidiary operates and manages for Taxpayer's TRS.

As part of the Company Y Acquisition, Taxpayer agreed to facilitate the replacement of the owner of the current license holder entities for the Company Y Communities. To fulfill that commitment, Taxpayer intends to take the following steps:

1. Creation of a new State C non-stock corporation (Company Y License Holder) to act as the license holder for the Company Y Communities.

2. Appointment of Taxpayer employees as the officers and directors of Company Y License Holder.

3. Company Y License Holder assumes from the current license holders the existing leases and operating agreements with the OpCos and thereby becomes a party to such leases and operating agreements.

4. Company Y License Holder assumes from the current license holders the existing management agreements with Company Y Subsidiary.

5. The Taxpayer/Company Y Agreement remains in place and unchanged by the implementation of the above steps.

Taxpayer represents that it will have no direct or indirect, current or residual equity interest in either the Company X License Holder or the Company Y License Holder (collectively, the License Holders). Upon the dissolution or liquidation of the License Holders none of the remaining assets will be distributed to Taxpayer, its affiliates, its officer, or its directors. Although officers and employees of Taxpayer will be appointed as officers and directors of the License Holders, such officers and directors will have independent fiduciary duties to the License Holders in such capacities, and Taxpayer will have no contractual or other right to control the decisions or behavior of such officers and directors in such capacities.

Furthermore, Taxpayer will insure and indemnify the officers and directors of the License Holders against any personal liability to which they may be exposed by acting in such capacities. Each License Holder will be licensed by State B and accountable for regulatory compliance to State B. Penalties can be imposed by State B on the License Holders for noncompliance with State B rules and regulations, and financial reports must be periodically submitted by License Holders to State B.

In addition, Taxpayer represents that the proposed arrangements between the License Holders and (1) the OpCos, (2) Taxpayer's TRSs, (3) Company X Subsidiary, and (4) Company Y Subsidiary are necessary and appropriate to enable the License Holders to comply with State Law and are designed to ensure that each License Holder will be financially able to perform its activities in accordance with State Law requirements. The arrangements enable the License Holders to secure the proper facilities, management services, and funding necessary to operate the Communities. Furthermore, Taxpayer represents that the License Holders will not manage or operate the Company X Communities or the Company Y Communities on a daily basis. The daily activities are the responsibility of Company X Subsidiary and Company Y Subsidiary, respectively.

Taxpayer also represents that it may, from time to time, make loans to the License Holders if the applicable License Holder's revenue is inadequate to pay its obligations as they come due. The loans, if made, will constitute "straight debt" under section 856(m).

Law and Analysis:

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, rents from real property.

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, rents from real property.

Section 856(d)(1) provides that rents from real property include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property; (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 856(d)(2)(B) provides that rents from real property does not include any amount received or accrued directly or indirectly from any person if the REIT owns directly or indirectly: (1) in the case of a corporation, stock possessing 10 percent or

more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of the corporation; or (2) in the case of any person that is not a corporation, an interest of 10 percent or more in the assets or net profits of the person.

Section 856(d)(8)(B) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) when a REIT leases a qualified lodging facility or qualified health care facility to a TRS, and the facility or property is operated on behalf of the TRS by a person who is an eligible independent contractor. A TRS is not considered to be operating or managing a qualified health care property solely because it possesses a license to do so.

Section 856(d)(3) defines an independent contractor as any person who does not own, directly or indirectly, more than 35 percent of the REIT's shares and, if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock) is owned directly or indirectly, by one or more persons owning 35 percent or more of the shares of the REIT.

Section 856(d)(9)(A) provides that the term eligible independent contractor means, with respect to any qualified lodging facility or qualified health care property, any independent contractor if, at the time such contractor enters into a management agreement or similar service contract with the TRS to operate the facility or property, the contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties for any person who is not a related person with respect to the REIT or the TRS.

Section 856(l) provides that a REIT and a corporation (other than a REIT) may treat such corporation as a TRS if the REIT directly or indirectly owns stock in the corporation, and the REIT and the corporation jointly elect such treatment.

Section 856(l)(2) provides that any corporation in which a TRS owns directly or indirectly more than 35 percent of the total voting power or value of the outstanding securities shall be treated as a TRS.

Section 856(l)(3)(A) provides that a TRS cannot directly or indirectly operate or manage a lodging facility or a health care facility. Section 856(l)(3)(B) provides that a TRS cannot directly or indirectly provide to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated, except in such case where such rights are provided to an eligible independent contractor to operate or manage a lodging facility or a health care facility and such rights are held by the TRS as a franchisee, licensee, or in a similar capacity and such lodging facility or health care facility is either owned by the TRS or is leased to the TRS from the REIT.

Taxpayer has represented that the management contracts between Taxpayer (and its affiliates) and Company X Subsidiary and Company Y Subsidiary contain many of the same rights as those required by State Law to be retained by the License Holders. Furthermore, the proposed restructuring does not change the day to day operation and management of the Communities. The daily activities remain the responsibility of Company X Subsidiary and Company Y Subsidiary, respectively. Section 856(d)(8)(B)(i) indicates that mere possession of a license should not lead to a conclusion that the TRS is operating a property. This provision illustrates Congress' intent that merely holding a license does not cause an entity to be engaged in operating or managing. In a case where the structure is compelled by state law, the analysis must look to the party that is actually performing the day to day management of the property to determine if a REIT or a TRS is actually managing or operating the property.

Accordingly, based on the information received and representations made, we conclude that the proposed restructuring to comply with the requirements of State Law: (1) will not result in any entity other than Company X Subsidiary and Company Y Subsidiary being treated as managing and operating the Communities within the meaning of section 856(l)(3); (2) will not cause the rent paid by Taxpayer's TRS to Taxpayer (through its disregarded entities) to fail to qualify for the section 856(d)(8)(B) exception for related party rents received from a TRS, and the rent will be qualifying income for purposes of the REIT gross income tests under sections 856(c)(2) and (c)(3); and (3) will not result in Taxpayer being considered to own any securities (for purposes of section 856(c)(4)) or stock (for purposes of § 856(l)) of the License Holders.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Jonathan D. Silver
Jonathan D. Silver
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)